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No. .....

.....

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1984

HERBERT D. HOWARD, PETITIONER

V.

STATE OF MARYLAND, RESPONDENT

Petition for a Writ of Certiorari
To The Court of Appeals
of the State of Maryland

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47 pp

QUESTIONS PRESENTED FOR REVIEW

1. Is there a violation of certain of the Petitioner's Federal Constitutional Rights, and are there certain other provisions of the Federal Constitution that are violated by the enactment of Maryland Law Article 81, Sections 280 & 294 which incorporate, by reference, specific federal laws, including future unknown and unspecified changes, that are intended to provide definitions and determinations of State Law?

2. Can the Sixth Amendment guarantee of a public trial by an impartial jury "in the State and district wherein the crime shall have been committed", be nullified either by Maryland Law Article 81, Section 294, or by findings of the Maryland Courts that citizens are not entitled to trial "in the County of the offense"?

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HERBERT D. HOWARD, PETITIONER

v.

STATE OF MARYLAND, RESPONDENT

Petition for a Writ of Certiorari
To The Court of Appeals
of the State of Maryland

Petitioner requests that a Writ of Certiorari issue to review the Order of the Court of Appeals of the State of Maryland

REPORT OF OPINION BELOW

The Court of Appeals of Maryland denied certiorari in this case in a Order dated August 20, 1984, and titled HERBERT D. HOWARD v. STATE OF MARYLAND, Petition Docket No. 167, September Term, 1984 (No. 941, September Term, 1983, Court of Special Appeals). A copy of the Order is included as Appendix "A".

The Court of Special Appeals of Maryland denied relief by an unreported Opinion per curiam dated March 27, 1984, and titled HERBERT D. HOWARD v. STATE OF MARYLAND, No. 941, September Term, 1983. A copy of the Opinion is included as Appendix "B".

JURISDICTIONAL STATEMENT

1. The date of the Order issued by the Court of Appeals of Maryland denying certiorari was August 20, 1984. Sixty calendar days from August 20, 1984 would

be October 19, 1984, the statutory final date for submission of the Certiorari Petition to the Clerk of the Court to allow timely docketing to proceed. On October 10, 1984, the Chief Justice of the Supreme Court signed an ORDER EXTENDING THE TIME TO FILE PETITION FOR WRIT OF CERTIORARI which extended the time for filing to and including November 16, 1984.

2. The jurisdiction of this Court is invoked pursuant to 28 USC 1257 (3), respecting a right, privilege, or immunity claimed under the Constitution, and pursuant to Article III, Section 2, of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES

Article Three, Section Two states in part:

> The trial of all Crimes,...shall be by jury; and such Trial shall be held

in the State where the said Crimes shall have been committed,...

Article Four, Section Four states in part:

> The United States shall guarantee to every State in this Union a Republican Form of Government,...

Fifth Amendment states in part:

> No person shall be... deprived of life, liberty, or property, without due process of law...

Sixth Amendment states in part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law,...

Tenth Amendment states in total:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Fourteenth Amendment states in part:

> Section 1: ...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

26 U.S.C. 6012(a) reads in pertinent part:

> GENERAL RULE: Returns with respect to income taxes under subtitle A shall be made by the following:
> III. (Every individual)...whose gross income...is, for the taxable year, (greater than) $5400...

MARYLAND STATUTES

Art. 81, Sec.280 reads in pertinent part:

> The taxable net income of an individual taxpayer of this State shall be that taxpayer's federal adjusted gross income as defined in the laws of the United States, as amended from time to time and in effect for the corresponding taxable year...

Art. 81, Sec. 294 states in pertinent part:

> Every individual resident of this State...who is required to file a federal income tax return under the provisions of Sec. 6012(a) of the Internal Revenue Code, as amended from time to time...shall file with the Comptroller a return...

Art. 81, Sec. 320 reads in pertinent part:

> The failure on the part of any person to file a return as required by the provisions of this subtitle...shall be deemed a violation of the provisions of this subtitle subject to penalty and interest as prescribed in Sec. 318 hereof. The wilful failure on the part of any person...to file a return...as re-

quired by the provisions of this subtitle...shall be a misdemeanor, subject to a fine...

STATEMENT OF THE CASE

1. Prior to 1967, the State of Maryland, in Art. 81, Sec. 280(a), provided its own determination of the thing called income.
2. In 1967, Maryland enacted Chap. 142 of the Laws of Maryland which changed the prior determination of income and adopted, for use in calculating the Maryland Income Tax, by reference, the federal determination of "adjusted gross income as defined in the laws of the United States."
3. In 1968, Maryland enacted Chap. 656 of the Laws of Maryland which amended Art. 81, Sec. 280(a) (mentioned above) and added a phrase so that the State determination of income then read, "...adjusted gross income as defined in the laws of the United States as amended from time to

time and in effect for the corresponding tax year, ..." The underlined material indicates the newly added phrase. This was the State law for the years that Petitioner was charged with.

4. In 1970, Maryland enacted Chap. 409 of the Laws of Maryland which changed Art. 81, Sec. 294 of the Laws of Maryland which was the prior definite criteria established by the State as to who shall file an income tax return. The new wording in Chap. 409, adopted, by reference, the federal requirement for filing a federal income tax return, "...under the provisions of Section 6012(a) of the Internal Revenue Code, as amended from time to time, ..." (emphasis added). This was the State law for the years that Petitioner was charged with.

5. In November, 1982, Petitioner, a resident of Baltimore County, was charged by the State's Attorney for Anne Arundel

County, via Criminal Informations, with "willfully" failing to file Maryland Income Tax Returns for 1979, 1980, and 1981. The Criminal Informations cited Art. 81, Sec. 320, Subtitle Income Tax, of the Public Laws of Maryland, pursuant to Sec. 279 et. seq. Section 320 deals with the criminality of failing to comply with Sec's. 280 & 294. Trial was set for March 15, 1983 in Anne Arundel County. On February 28, 1983, Petitioner timely filed a MOTION TO DISMISS with MEMORANDUM, which included the following summarized federal issues:

A. Maryland Public Law Art. 81, Sec's. 280 & 294 are repugnant to the Constitution of the United States because they incorporate, by reference, federal determinations that are subject to future amendments. (R. 41, 49-50).

B. Maryland Public Law Art. 81, Sec. 294 is repugnant to the Sixth Amendment of the Constitution of the United States because it improperly lays venue in Anne Arundel County for "willfully" failing to file an income tax return regardless of where the act of omission was actually committed. (R.41, 47-49).

6. A hearing on the federal questions raised in the MOTION was held immediately prior to the Jury Trial by Judge Eugene Lerner of the Circuit Court of Anne Arundel County on March 15, 1983. In regard to the federal question of the State adoption of federal law with future amendments, Judge Lerner denied the MOTION by saying:

> The Court is going to deny your motion as to this. The Court feels that one doesn't rely on the other, really, to the extent that there is any delegation to the federal government of any of the State's rights and what we have here simply is a State law requir-

ing the filing of a return ..." (T.17)

7. In regard to the issue of venue, Judge Lerner denied the MOTION by saying:

> Well, the Court concludes that the requirement is that you file the return with the Comptroller's office and the Comptroller is here in Annapolis, and therefore, jurisdiction does lie within Annapolis, Anne Arundel County. So therefore, I don't find that there is any violation. Jurisdiction is in Anne Arundel County. (T. 13)

The denials were objected to. (T.9)

8. The case went to trial and during the course of the trial, the prosecution utilized the determinations of federal law, as amended from time to time, as evidence against the Petitioner. (T. 104, 106, 254)

9. After the State rested its case, the Petitioner entered a MOTION FOR JUDGEMENT OF ACQUITAL in which the two beforestated federal issues were again presented. (R. 98, T.142). The Court denied them again (T. 142-143).

10. After all tesimony was given, the Pe-

titioner renewed his MOTION FOR JUDGEMENT OF ACQUITAL (T.259) and the Court again denied them (T. 259).

11. The Jury returned a verdict in favor of the State and at the sentencing hearing, the Petitioner entered a MOTION FOR A NEW TRIAL in which the federal issues of adoption of federal law with future amendments, and of venue, were again raised (R. 104, T. 19, 26-31). These issues were again denied. (T. 28, 31).

12. An appeal was made in a timely manner to the Maryland Court of Special Appeals where the beforementioned federal issues were raised in the Petitioner's Brief. The Attorney General addressed these federal questions in his BRIEF of APPELLEE, and the Petitioner responded in his REPLY BRIEF. Oral arguments were heard and the Petitioner supplied additional information to support his position. That Court issued an OPINION, per curiam, (Appendix

B) and affirmed the ruling of the lower Court.

13. A PETITION FOR A WRIT OF CERTIORARI was submitted to the Maryland Court of Appeals (the Maryland Court of Last Resort) in a timely manner and the beforementioned federal issues were raised again. Relative portions of that Petition are quoted herein:

> I. Can the Sixth Amendment guarantee of a public trial by an impartial jury "in the State and district wherein the crime shall have been committed", be nullified, either by ANN. CODE MD. Article 81, Sec. 294, or findings of the Maryland Courts that citizens are not entitled to trial "in the county of the offense:?
>
> II. May the income tax laws of the sovereign State of Maryland be lawfully amended in substance from time to time by actions of the United States Congress?

That Court issued an ORDER on August 20, 1984 denying certiorari. (Appendix "A")

14. The Petitioner has submitted this Petition to this Court raising these federal issues in a timely manner.

REASONS FOR GRANTING WRIT

The Maryland Court of Appeals, being a State Court of Last Resort, by denying certiorari in Petitioner's case, has upheld an erroneous decision of the Maryland Court of Special Appeals, which decided federal questions in conflict with the decisions of other State Courts of Last Resort, and which has decided important questions of federal law which have not been, but should be, settled by this Court. Also, it decided a federal question in a way in conflict with applicable decisions of this Court.

I.

Is there a violation of certain of the Petitioner's Federal Constitutional Rights, and are there certain other provisions of the Federal Constitution that are violated by the enactment of Maryland Law Article 81, Sections 280 & 294 which incorporate, by reference, specific federal laws, including future unknown and unspecified changes, that are intended to provide definitions and determinations of State Law?

Maryland Law Art. 81, Sec. 280 & 294, deal with the State Income Tax and, in specifying what is to be the determination of the thing to be taxed, and what are to be the requirements for filing a State Income Tax Return, they adopt, by

reference, certain Federal laws containing definitions and determinations, "as amended from time to time." These two Sections are the basis for determining whether Section 320, which Petitioner has been found guilty of failing to comply with, has been violated. The Petitioner, with proper standing and in a timely manner, challenged the validity of these laws as being repugnant to the Federal Constitution because they conflict with Article Four, Section Four guaranteeing every State a republican form of government and because they conflict with other Federal Constitutional provisions as explained in this Petition. The following facts are asserted to support this position.

A republican form of government has been described in Duncan v. McCall, 139 U.S. 219, 224, (1891), and the distin-

guishing features of that form, especially as related to this Petition, are the sovereignty of each State, and a representative legislature with strict limitations imposed by a written State Constitution. The State of Maryland has met these features in the past, but, in 1968, Maryland enacted changes (Public Laws of Maryland-1968-Chap. 656, pg. 1321) to Art. 81, Sec. 280 (Income Tax Laws) which adopted, by reference, the federal definition of adjusted gross income, "...as amended from time to time and in effect for the corresponding taxable year. This made the thing to be taxed determinable not by the State of Maryland, but by the Federal congress and subject to change of definition by that body. Also, changes to Article 81, Sec. 294 (which determines "Who shall file") were enacted in 1970 (Public Laws of Maryland-1970-Chap. 409, pg. 968) and these changes adopted, by

reference, the federal law (Section 6012 (a) of the Internal Revenue Code), "... as amended from time to time," (emphasis added) as the criteria for who shall file a Maryland Income tax return. The passage of these two Acts effectively removes the determination of Maryland Law from the State of Maryland. vests it in a foreign (to the State) legislative body (the Federal Congress) in which Maryland has less than 2% representation, and IN THIS PARTICULAR INSTANCE, violates a republican form of government.

It has been said that questions arising under Article Four, Section Four are "political" and are not justiciable. Petitioner asserts that no provision of the Federal Constitution prohibits the judicial branch of the Federal government from hearing violations of any part of that Constitution. Chief Justice Marshall said in Cohens v. Virginia, 6 Wheaton 264, 378

(1821):

> "...it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a Constitutional right to come into the courts of the Union."

See also In Re Cooper, 143 U.S. 503.

When government comes into direct contact with an individual under questionable circumstances, then that individual can legitimately raise an issue as to the Constitutionality of that contact. Petitioner has standing in this instance because specific evidence was entered against him in the trial Court based on amendments to those Sections passed after adoption by the State (T.104, 106, 254). This is also violative of the due process clause of the Fourteenth Amendment. While the State of Maryland may operate in every other instance in a republican form of government, in this particular instance, an anti-republican law, which is repugnant to the Federal Constitution has been up-

held by the Maryland Court of Appeals.

This same issue of a state adopting, by reference, Federal Laws with future enactments was raised and denied in another State Court of Last Resort in Santee Mills v. Query, 122 S.C. 158, 115 S.E. 202, 205 (1922):

> The next contention to be noticed is that the act incorporated by reference laws made and to be made by Congress and regulations made and to be made thereunder by federal officers, and that it thereby contravenes section 1 of article 3 of the state constitution and section 4 of article 4 of the United States constitution in delegating to the United states Congress and to federal officers the nondelegable legislative powers of the General Assembly. There can be no doubt that 'the enactment of laws is one of the high prerogatives of a sovereign power," and that "it would be destructive of fundamental conceptions of government through republic institutions for the representatives of the people to abdicate their exclusive privilege and obligation to enact laws." In Re Opinion of the Justices, 230 Mass. 606, 133 N.E. 453.

The Santee Mills Court then pointed out that the reason that the South Carolina statutes did not violate Article Four, Sec-

tion Four was because the statutes did not adopt future amendments of the federal law made after the passage of the Act, but only adopted the Federal definition as it stood at the time that the Act was passed. This is in direct contrast to the Maryland laws which adopt the future federal amendments, and this puts Santee Mills completely in conflict with the Maryland Court of Appeals denial of certiorari and upholding of the lower Courts denial of the charge of unconstitutionality and repugnancy of Art. 81, Sec. 280 & 294.

The upholding of Maryland Art. 81, Sec. 280 & 294 also constitutes an unlawful delegation of legislative authority in violation of the Tenth Amendment to the Federal constitution and to the Due Process clause of the Fourteenth Amendment. See Panama Refining v. Ryan, 293 U.S. 388, 79 L. Ed. 446, 458-9 for limits on lawful delegation of legislative authority. This

violation of Due Process is seen by the erroneous reliance by the Maryland Courts against the Petitioner (see Appendix "B" on Leatherwood v. State, 49 Md. App. 683, 687-88 (1981), 435 A. 2d. 477, which was addressed by the Court as a challenge to the Maryland Constitution, while the Petitioner was raising the Federal question, and by the Courts reliance on Katzenberg v. Comptroller, 263 Md. 189, 200 (1971), 282 A. 2d. 465.

The Courts improper reliance on Katzenberg falls on the fact that Katzenberg addresses itself to the 1967 amendment to the Maryland Income Tax Law which switched the determination of the thing called income from standards set by Maryland, to the adoption, by reference, to the Federal standard without future amendments. As Petitioner mentioned earlier, it was in 1968, one year later, that Maryland added

the phrase "as amended from time to time" which the Petitioner claims as the basis of contention. The adoption of the 1967 amendment (Public Laws of Md.-1967, Chap. 142, pg. 175) which simply adopts another standard, is not questioned by Petitioner, in fact Petitioner cites several cases which readily support such action; Santee Mills v. Query, supra; State v. Holland, 117 Me. 288, 104 A. 159; and Underwood v. Chamberlain, 94 Conn. 47, 108 A.154 (1919) aff'd., 254 U.S. 113, 41 S.Ct. 45, 65 L. Ed. 165 (1920). However, the violation of the Tenth Amendment, by adoption, by reference of federal laws including future amendments, is pointed out in Smithberger v. Banning, 129 Neb. 651 (1935), 262 N.W. 492, 100 ALR 686, 693-4, which upholds Petitioner's claim and thus makes the State Court of Last Resort in Nebraska in conflict with Katzenberg, supra, which the Maryland Court of Appeals let stand in Pe-

titioner's case.

See also Franklin v. U.S., 216 U.S. 559, 568, 30 S.Ct. 434, 54 L. Ed. 615 in which this Court's ruling is in conflict with the Maryland Court of Appeals in Petitioner's case.

Although a later case from Nebraska, Anderson v. Tiemann, 182 Neb. 393, 155 N. W. 2d. 322, upheld the specific delegation of legislative authority to adopt, by reference, federal income tax laws including future federal income tax laws as they became effective, it was only because in the interim since Smithberger, supra, the State of Nebraska had passed a constitutional amendment that the Anderson Court declared allowed such a condition to exist specifically in regard to Nebraska Income Tax Laws. The Petitioner affirms

to this Court that no such similar Amendment exists to the Maryland Constitution. Also, the Anderson Court stated that Smithberger:

> ...has not been overruled, and remains law in this jurisdiction, except as it may be affected by the Constitutional Amendment quoted above.

The fact that Anderson was appealed to this Court and dismissed "...for want of a substantial federal question," could well be that the element of the State Constitutional Amendment resolved the issue, and also because the Appellant lacked standing as an individual specifically harmed.

The conflict on a substantial federal question is apparant; the Maryland Courts, in Petitioner's case, have ruled that the adoption, by reference, of federal laws, including amendments that are made after the State Act has been passed, does not constitute an unlawful delegation of leg-

islative authority that is repugnant to the Tenth Amendment of the Federal Constitution, while Federal Courts and other State Courts of Last Resort have ruled otherwise. See also State v. Webber, 125 Me. 319, 133 A. 738; Thorpe v. Makin, 43 Ill. 2d. 36, 250 N.E. 2d.633, 640 (1969); State v. Intoxicating Liquors, 121 Me. 438, 117 A. 588, 590; State v. Gauthier, 121 Me. 522, 118 A. 380, 381, 26 ALR 652 (1922).

The Order of the Maryland Court of Appeals is also violative of the Petitioner's Due Process Rights under the Fourteenth Amendment in that another deliberative body (foreign to the State) determines the definition of the size of the thing to be taxed and the requirements for filing a tax return. These determinations, codified in State Law, and later amended by federal law, were used as evidence

against the Petitioner (T.104, 106, 254) when, in fact, the Petitioner was never presented with the opportunity to influence his State Legislative process. Alaska Steamship Co. v. Mullaney, 180 F.2d. 805 holds that due process is not affected when one is not injured in the adoption of future amendments, however, Petitioner has been injured and the result is that he is subject to be deprived of his liberty and property pending the outcome of this Petition. The "prospective" aspect of Md. Art. 81, Sec. 280 & 294 does not meet the due process requirement because when the requirements for filing a tax return under IRC 6012(a) were being changed in 1978 by the Federal Congress, the Petitioner had no opportunity to affect the positive law of Maryland. This was further pointed out in an affront-to-due-process letter from Maryland Comptroller Louis Goldstein that was included in the Maryland Tax Packet

for tax year 1979 (a year for which Petitioner was charged for not filing) which said in part:

> As a result of the Federal Revenue Act of 1978, the minimum income requirements for filing a Maryland Income tax Return have been changed.

The fact that the Maryland Legislature, could have acted at any time (when it was in session), after the fact, to offset or negate any positive aspect of the determination of income, or the determination of who is required to file, passed by the Federal Congress, does not justify the unconstitutionality of the Maryland Act. The Petitioner was entitled to access to the deliberative law-making process necessary in a republican form of government and this due access was denied him by placing the authority to define the Maryland law outside of the Maryland legislative process. See Wotton v. Bush, 41 Cal. 2d. 460, 261 P 2d. 256.

The issue raised here of a State adopting, by reference, federal law with future amendments, has been decided in conflict by different State Courts of Last Resort, and is an issue that has not been, but should be settled by this Court since there is no lack of satisfactory criteria for judicial determination and since it is an issue of first impression which is ripe for adjudication.

II.

Can the Sixth Amendment guarantee of a public trial by an impartial jury "in the State and District wherein the crime shall have been committed", be nullified either by Maryland Law Article 81, Section 294, or by findings of the Maryland Courts that citizens are not entitled to trial "in the County of the offense"?

The State of Maryland claims that because Maryland Art. 81, Sec 294 says every individual who is required to file a Maryland Income Tax Return "...must file with

the Comptroller ...", therefore, the "willful" failure to file a return constitutes a crime in Anne Arundel County, Maryland where the Comptroller is located and the trial should take place in that County regardless of whether the accused lives in that County or was even in it on the day of the alleged crime.

Petitioner asserts that the Law he was charged with violating, Md. Art. 81, Sec. 320, distinguishes between failure to file and "willful" failure to file. The "willful" failure to file constitutes not just an omission, but an act of omission which had to occur at some particular place. There was no allegation that the Petitioner was in Anne Arundel County or just where he was on the date of the offenses. Since the tax is imposed on the privilege of residency and only measured by income, the Petitioner asserts that in lieu of having proof of actual whereabouts, the

charges should have been brought in his district of residency, which was Baltimore County.

The Maryland Court of Appeals, in denying certiorari, has upheld the lower Court ruling (See Appendix "B") which cites the authority of Stewart v. State, 21 Md. App. 346 (1974), that there is no constitutional right for a defendant in Maryland to enjoy the protections of the Sixth Amendment to the United States Constitution, as they apply to trial in the State and district wherein the offense shall have been committed. The first fact distinguishing Stewart, is that the crime of Stewart was a crime of commission, which occured at a particular place. The claim of the Stewart Court that there is no constitutional right to be tried in the "County where the crime was committed", was based on the Federal Constitution, Art. 3, Sec. 2, cl. 3, and not on the Sixth Amendment. The

rationale of the Court is therefore distinguished entirely, and the prior argument will still hold.

The State asserts that the common law protection, implemented by the Sixth Amendment does not apply and that the State government can require defendants to travel all over the state of Maryland for trial, without limitation. None will deny that the Sixth Amendment protections apply to the States, and protect the Citizens of the United States against oppressive deprivations of the Sixth Amendment guarantees, but the State asserts that this particular protection does not.

The application of the Sixth Amendment is provided by the Fourteenth Amendment, which guarantees "due process" to Citizens, a right already guaranteed by the Fifth Amendment, but especially stressed, even by early authority, such as Hurtado v. California, 110 U.S. 516 (1884), where-

in Justice Mathews, speaking for the Court stated;

> [a]rbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our constitutional law upon the actions of the governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well as the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and weilding the force of government.

Respecting the application of the Fourteenth Amendment to the various States, Justice Brewer of this Court stated in Budd v. New York, 143 U.S. 517 (1892) that:

> The paternal theory of government is to me odious. The utmost possible liberty to the individual and the fullest possible protection to him and his property, is both the limitation and duty of government.

The Supreme Court then proceeded to diffuse the prior maxim that a state statute must be presumed to be valid until clearly shown to be otherwise.

The Petitioner demanded Sixth Amendment Constitutional Rights. He did not claim or expect any protections from the State of Maryland, its laws, or its public officials. The Petitioner asserts that such a demand is a fundamental right of a nature protected by the due process clause, and the "rights and immunities" provision.

Of the four elements necessary to prove to gain a conviction in a criminal trial of this nature, the last element of "willfullness" involves a definite act or a deliberate decision <u>not</u> to perform an act. A defense of "negligence" in a case such as this would mean that a person is admitting that he did not do something (file a form) in Anne Arundel County that he knew he was supposed to do. However,

the State entered into Petitioner's case with the full knowledge that it was going to prove that the Petitioner did not neglect to file a form in Anne Arundel County , but rather that he willfully, with full knowledge of the law, made a definite deliberate decision at some time and place to commit an offense and break the law. Therefore, the State was wrong in forcing the trial in Anne Arundel County when it knew that the Petitioner was not a resident of the County, and when they had no proof whatsoever that he was even in or near the County when the offensive act was committed. The State entered evidence during the trial in the form of letters between Petitioners and officials of the Income Tax Div. which were addressed to, or received from, the Petitioner at his address in Baltimore County. Telephone contact with the Petitioner was made in Baltimore County. Prosecution witnesses

testified that they reached a conclusion to prosecute after talking and corresponding with Petitioner in Baltimore County, (T. pages 94, 110-1, 113, 121-125, 131-2) yet the State claims, and the Maryland Court of Appeals upholds, that the proper place where the offense was committed was Anne Arundel County and that the Petitioner has no Sixth Amendment Right to a trial in Baltimore County, where he lived and worked and where he, in fact, committed the offensive act that he was charged with. There were no factual transactions occuring in Petitioner's case which offer a shred of evidence of action in Anne Arundel County. The State is trying to establish a false premise that solely by means of Legislative action a crime can be defined anywhere in Maryland, without a fact to base it on.

The Maryland Court of Appeals, in denying certiorari, and upholding the decision

of the lower Court has decided an important question of Federal Law which has not been, but should be, settled by this Court.

CONCLUSION

WHEREFORE Petitioner Herbert D. Howard submits that the Writ of Certiorari is due to be granted, and upon final determination of the cause, the Petitioner's conviction in the Circuit Court of Anne Arundel County, Maryland should be reversed.

For the reasons shown hereinabove, and in the interests of justice and continuance of valid Constitutional principles, Petitioner moves the Court to issue its Writ of Certiorari to the Maryland Court of Appeals.

Respectfully submitted,

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APPENDIX "A" [dated August 20, 1984]

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 167 Sept. Term, 1984

(No. 941, Sept. Term, 1983 - Court of Special Appeals)

HERBERT D. HOWARD

V

STATE OF MARYLAND

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

APPENDIX "B" [dated March 27, 1984]

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 941

September Term, 1983

HERBERT D. HOWARD

v

STATE OF MARYLAND

Moylan, Weant, Alpert, JJ PER CURIAM

The appellant, Herbert D. Howard, was convicted by an Anne Arundel County jury, presided over by Judge Eugene Lerner, on three separate criminal informations, charging failures to file Maryland Income Tax Returns for the years 1979, 1980, and 1981. Upon this appeal, the appellant has raised four contentions:

1. That the criminal informations were fatally flawed in that they failed to charge an offense;

2. That he should not have been brought to trial in Anne Arundel County;

3. That the incorporation into Maryland tax law of portions of federal law is unconstitutional; and

4. That the jury was improperly instructed.

We see no merit to any of the contentions raised on this pro se appeal. The criminal information charging the failure to file an income tax form in 1979 (but for the difference in date, the other two informations were verbatim) read as follows:

> "The State's Attorney informs and charges that the aforesaid defendant, on or about the aforesaid date, did willfully fail to file a 1979 [1980] [1981] Maryland Income Tax Return (Maryland Form 502) as required by the provisions of Article 81, Section 320, subtitle Income Tax, pursuant to Section 279 et seq. (Article 81, Section 320)"

The charge is adequate. It names the defendant, the date of the commission of the crime, the place where the crime occured, and adequately states the crime in ques-

tion. There was sufficient particularization of the operative facts. Whitehead v State, 54 Md. App. 428, 441-445 (1983).

The appellant's second contention is that he, as a resident of Baltimore County, should not have been brought to trial in Anne Arundel County. In claiming that he was denied his constitutional right to be tried in the jurisdiction in which the offense was committed, the appellant mistakes venue with jurisdiction. In Maryland, there is no constitutional right to be tried in the County where the crime was committed. Stewart v State, 21 Md.App. 346 (1974). Venue, morover, was proper in Anne Arundel County.

The appellant states his third contention in the following terms:

> "The defendant asserts the unconstitutionality of the Maryland statutory provision in Article 81, Section 294 which, in its definition of a person required to file a State income tax return, unlawfully attempts to incorporate the provisions of 'Section 6012

(a) of the (federal) Internal Revenue Code as amended from time to time." (Emphasis in original).

This issue was settled by this Court, adversely to the appellant's present contention, in Leatherwood v State, 49 Md. App. 683, 687-688 (1981). See also Katzenberg v Comptroller of the Treasury, 263 Md. 189, 200 (1971).

The appellant's final contention is that Judge Lerner erroneously instructed the jury on the questions of "good faith" and the appellant's claim to a Fifth Amendment privilege. The contention itself goes only to the court's failure to use the appellant's requested language rather than the court's own. We have thoroughly reviewed the instructions actually given by the court and find them to have fairly covered the subject matter of the advisements.

JUDGEMENTS AFFIRMED
COSTS TO BE PAID BY APPELLANT